

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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GREGORY BERGMAN,	)	
	)	Civil Action No.:
	)	
Plaintiff,	)	<b>COMPLAINT</b>
	)	<b>(DEMAND FOR JURY TRIAL)</b>
v.	)	
	)	
KEITH MCNALLY,	)	
	)	
Defendant.	)	

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Plaintiff, Gregory Bergman (“Plaintiff” or “Gregory”) by his undersigned attorneys,  
Turturro Law, P.C., as for his Verified Complaint herein, alleges as follows:

**NATURE OF THE ACTION**

1. This action arises from reckless, false, and defamatory statements made and published by defendant Keith McNally (“Defendant” or “Keith”) about the Plaintiff, a consultant and expert on financial and public relations in the areas of financial media and investor awareness, which have caused him substantial damages.

**PARTIES**

2. At all relevant times, Plaintiff is a citizen and resident of New Hampshire.

3. Upon information and belief, the Defendant, Keith McNally, is a citizen and resident of New York and, at all times relevant herein when the statements were made, was and still is employed by KMTB Equities (“KMTB”), a domestic corporation formed under the laws of the State of New York, with its principal place of business located in Nassau County, New York.

### **JURISDICTION AND VENUE**

4. This Court has original jurisdiction over this matter because the amount in controversy exceeds \$75,000.00 and all parties are citizens of different states.

5. Venue is proper in this district under 28 U.S.C. § 1391, as a substantial part of the events giving rise to this action occurred in the Eastern District of New York.

### **BACKGROUND**

6. As stated in Paragraph 1 of this Complaint, this action arises from the reckless, false, and defamatory statements made and published by defendant Keith McNally about Plaintiff.

7. Specifically, Defendant made such statements about the Plaintiff to at least one of Plaintiff's business clients and another to a business relationship in an attempt to maliciously, and, upon information and belief, tortiously interfere and steal the client/business relationship and harm Plaintiff's good reputation and name.

#### ***i. Defendant's Defamatory Statements to ShiftPixy, Inc.***

8. Specifically, on or around October 4, 2021, Defendant, with knowledge that ShiftPixy, Inc., a publicly traded company listed on the NASDAQ ("Client"), had engaged Plaintiff as a media consultant sent an electronic message to initiate a conversation with Scott Absher (the CEO of ShiftPixy), which concerned the Plaintiff.

9. Specifically, on October 5, 2021, during the Absher-Defendant exchanges, the Defendant, without any prompt or cause whatsoever, maliciously and falsely defamed Plaintiff stating, "Scott, Greg [the Plaintiff] is not an honest guy and he steals from companies and never

does right by them. I wanted to do PIXY [the stock ticker for ShiftPixy, Inc.] the right way but he didn't and hired a few small people and he did nothing. He also stole some of my groups to do his deals and cut me out of the process. I would like a chance to show you what my teams can do for PIXY."

13. Furthermore, after Defendant made further attempts to steal Plaintiff's consulting business with Client, on October 12, 2021, in response to a follow up email with Client, Defendant, yet again, without basis defamed the Plaintiff stating, "[Greg] has fucked a lot of people" in a clear attempt to color the credibility and reputation of Plaintiff's personal life, occupation, and community and networking activities.

14. Following the above exchange, and also on October 12, 2021, the Defendant recklessly added for good measure that "He is a liar and a thief. Do not believe a word he says."

***ii. Defendant's Defamatory Statement to Blue Digital Media***

15. On October 28, 2021, Defendant, without any prompt or cause whatsoever, maliciously and falsely defamed Plaintiff yet again. Specifically, in a WhatsApp text message to to founder/head of one of Plaintiff's business relationship, Blue Digital Media, Defendant wrote, "GREG IS BEING INVESTIGATED BY sec FOR STEALING MONEY FROM pixy AND fingr ..."

**FIRST CAUSE OF ACTION**  
***(Defamation under New Hampshire Law)***

16. Plaintiff repeats, realleges, and incorporates each and every allegation contained in Paragraphs 1 through 15 as though fully set forth herein.

17. As noted above, this claim arises out of and is for damages with regard to false and defamatory statements made by the Defendant to Scott Absher, the CEO of ShiftPixy; and, to Blue Digital Media.

18. Specifically, on October 4, 2021, October 5, 2021, October 12, 2021 and October 28, 2021, the Defendant made the above-referenced defamatory statements about the Plaintiff, which were false, unprivileged, and then published by Defendant to the foregoing parties.

19. Upon information and belief, the Defendant made the foregoing defamatory statements for improper purposes, with knowledge that the statements would be published, and that said publication would disseminate throughout the United States and the State of New Hampshire, where the Plaintiff resided and still resides.

20. The above-pled misconduct by the Defendant constitutes the tort of defamation.

21. Upon information and belief, the Defendant intentionally portrayed the Plaintiff in the above-referenced manner knowing that his depiction was false and untrue with reckless and wanton disregard for the truth.

22. The above-referenced false and defamatory statements made by the Defendant have caused Plaintiff great anguish and emotional distress and have injured the Plaintiff's

credibility and reputation in his personal life, occupation, and community and business networking activities.

23. Since the Defendant's defamatory statements, both expressly and by implication, are ones that would tend to harm the reputation of Plaintiff and/or deter third persons from associating or dealing with Plaintiff in the conduct of his profession while also exposing him to public contempt, ridicule, aversion and disgrace, Plaintiff is presumed to have suffered injury and damages, and the Defendant has committed defamation *per se*.

24. Defendant's statements, further, both expressly and by implication, are defamatory *per se* as they falsely and outrageously impute serious criminal behavior such as "stealing" and being investigated by federal agencies such as the Securities and Exchange Commission. In such a case, damages resulting from the Defendant's defamatory statements are also presumed as a matter of law.

25. However, as a direct and proximate result of the aforementioned acts, Defendant has, upon information and belief, caused harm to Plaintiff, which includes, but is not limited to general and specific damages in an amount not presently known, but subsequently ascertainable and believed to be not less than several hundred thousand dollars, including damage to, among other things, Plaintiff's reputation, standing in the community, and work as a principal of his financial marketing company.

26. Upon information and belief, Plaintiff alleges that the aforementioned acts of the Defendant were done intentionally or with conscious disregard of Plaintiff's rights, and with the intent to vex, injure, or annoy Plaintiff, such as to constitute oppression, fraud, malice, or wanton and reckless disregard of the truth, thus entitling Plaintiff to exemplary and punitive damages in an amount appropriate to punish or set an example of the Defendant and to deter

such conduct in the future, which amount will be proved at trial, but estimated at no less than the monetary jurisdictional threshold of this court in diversity lawsuits (i.e., \$75,000.00).

**JURY DEMAND**

WHEREFORE, Plaintiff demands judgment against the Defendant Keith McNally, on his first cause of action for compensatory and punitive damages in an amount to be proven at trial, together with the costs and disbursements of this action.

Dated: September 25, 2023  
Staten Island, NY

Yours, etc.

**TURTURRO LAW, P.C.**  
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